

**BOARD OF ZONING APPEALS
MINUTES
JUNE 22, 2004**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on June 22, 2004, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:

JAMES RUANE, DWIGHT GREENLEE, BICKLEY FOSTER, ERMA MARKHAM,
RANDY PHILLIPS, JOHN ROGERS, and JAMES SKELTON, in at 1:34 p.m.

KELLY RUNDELL – Law Department present.

HERB SHANER - Office of Central Inspection present.

The following Planning Department staff members were present:

DALE MILLER, Secretary.

ROSE SIMMERING, Recording Secretary.

RUANE Item #1, April 27, 2004, BZA meeting minutes.

FOSTER moves, GREENLEE seconds to approve April 27, 2004, BZA meeting minutes.

Motion carries 6-0.

RUANE Item 2, Case No, BZA2004-33, Request Variances for a billboard to increase the permitted height from 51.4 feet to 69.8 feet, to reduce the front setback from 20 feet to 15 feet, to increase the number of billboards permitted within the mile from five to six, and to reduce the spacing required between billboards from 330 feet to 80 feet on property zoned “LI” Limited Industrial, generally located south of Kellogg and east of St. Francis. Applicant Bressler/Kelso Joint Venture, and Kansas Oklahoma Railroad, and Agent, Ferris Consulting, %Greg Ferris.

MILLER, Planning staff Presents staff report and slides. Staff recommends approval, subject to conditions, in the following staff report.

SECRETARY’S REPORT

CASE NUMBER: BZA2004-00033

OWNER/APPLICANT: Kansas and Oklahoma Railroad c/o Brad Snow (Owner);
Bressler/Kelso Joint Venture c/o Pat Kelso (Applicant)

AGENT: Greg Ferris (Agent); Mike Case (Attorney)

REQUEST: Variances for a billboard to increase the permitted height from 51.4 feet to 69.8 feet, to reduce the front setback from 20 feet to 15 feet, to increase the number of billboards permitted within the mile from five to six, and to reduce the spacing required between billboards from 330 feet to 80 feet

CURRENT ZONING: “LI” Limited Industrial

SITE SIZE: 0.05 Acres

LOCATION: South of Kellogg and east of St. Francis

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: On March 26, 2003, the Office Central Inspection issued the attached letter indicating that no sign permit was required to construct a billboard on the subject property, which is a portion of railroad right-of-way that is zoned "LI" Limited Industrial and is located south of Kellogg and east of St. Francis. On June 17, 2003, the applicant sent the attached letter asking for confirmation that no sign permit was required, and on that same date, the Office of Central Inspection issued the attached letter confirming that no sign permit was required for the proposed billboard. The applicant subsequently constructed a billboard on the subject property. On September 5, 2003, the Office of Central inspection issued the attached letter indicating that previous correspondence regarding no sign permit being required was in error.

The billboard that was constructed on the subject property does not conform to the following requirements of the Sign Code:

1. Section 24.04.222.2. of the Sign Code limits the height of a billboard located adjacent to an elevated highway to 14 feet above the top of the railing or barrier along the traffic deck. For the subject property, a billboard would be limited to 51.4 feet in height since the freeway railing is 37.4 feet in height. The billboard on the subject property is 69.8 feet in height, as illustrated on the attached sign elevation drawing; therefore, the applicant is seeking a variance to permit the increased height at which the billboard was constructed.
2. Section 24.04.222.4. of the Sign Code requires billboards to meet all building setback requirements. For the subject property, a setback along Kellogg of 20 feet is required. The billboard is set back 15 feet from Kellogg, as illustrated on the attached site plan; therefore, the applicant is seeking a variance to permit the setback at which the billboard was constructed.
3. Section 24.04.222.1. of the Sign Code limits the number of billboards in the mile between Broadway and Hydraulic to five. As illustrated on the attached map, there were already five billboards within this mile when the applicant's billboard was constructed. Therefore, the applicant is seeking a variance to increase the number of billboards permitted within this mile from five to six.
4. Section 24.04.222.3.c. of the Sign Code requires billboards to be separated by 330 feet; however, as illustrated on the attached map, the billboard on the subject property is separated from the nearest billboard by less than 90 feet. Therefore, the applicant is seeking a variance to reduce the spacing required between billboards from 330 feet to 80 feet.

The applicant submitted the attached letter dated March 22, 2004, that addresses how the request meets the criteria for granting the variances requested. The applicant also submitted the attached letter dated June 11, 2004, indicating that the railroad has leased land for the billboard and does not object to the application for the variances.

ADJACENT ZONING AND LAND USE:

NORTH	“LI”	Railroad
SOUTH	“LI”	Railroad
EAST	“LI”	Bus maintenance facility
WEST	“LI”	Various industrial and commercial uses

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the applicant was informed twice by the Office of Central Inspection that a permit for the billboard was not required. Had a permit been required, the non-conformities could have been identified prior to construction and addressed at that time.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as adjacent properties are used primarily for industrial purposes and are located along a state highway where billboards are common. The variances requested for the billboard do not significantly increase the impacts of the billboard on adjacent properties.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as the applicant relied upon an Office of Central Inspection interpretation that a permit was not required and constructed the billboard in good faith based on this written interpretation. Removing the billboard would entail significant expense and lost revenue to applicant in order to remedy an error by the Office of Central Inspection.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the billboard is not significantly out of scale and the variances requested do not detrimentally impact uses or projects of public interest.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as the billboard reasonably balances the need for the sign with the preservation of the visual qualities of the community.

RECOMMENDATION: Should the Board determine that the conditions necessary to the granting of the variance exist, then it is the recommendation of the Secretary that the variances for a billboard to increase the permitted height from 51.4 feet to 69.8 feet, to reduce the front setback from 20 feet to 15 feet, to increase the number of billboards permitted within the mile from five to six, and to reduce the spacing required between billboards from 330 feet to 80 feet be GRANTED subject to the billboard complying with all other regulations of the Sign Code.

FOSTER Dale, is there anything that is different from the one that we heard a couple of months ago?

MILLER This is the same scenario you saw at your previous meeting.

FERRIS CONSULTING, GREG FERRIS This is exactly the same situation that we were in two months ago when a similar case came before you. I think you have in your packet letters from

the City of Wichita telling at least my client and the railroad that a permit was not required on this. We also have a record from the last meeting where Mr. Kessler also agreed that he was also verbally told that they did not have to comply with the sign regulations in the railroad right-of-way. That changed, and you will see the letter there where that changed after the sign was erected. No further signs are planned or have been erected since that date.

We are certainly caught in a situation where someone came in good faith, had a meeting with the City of Wichita, got a response from the City of Wichita and then asked the City to restate that again in another letter, received that letter as well, and so I think you see the similarities here are identical. The only difference is the variances are a little different than what we needed in the other case, as far as setbacks and those kinds of things. We would ask the Board of Zoning Appeals to grant the variance based on the staff report, and the findings, because it is worthy of that, and it does meet the criteria.

FOSTER What is the size of the sign itself?

FERRIS The size of the sign does actually comply with the Sign Code. It is 14' X 48', is the face of the sign, which is the standard that is allowed in the guidelines of the Sign Code.

JOHN LAY, GEORGE LAY SIGNS, 1016 N. WACO, WICHITA KS 67203 I have been to this Board of Zoning Appeals several times before. It has never been with a billboard issue it has always been on-site issues. Frankly, I always thought the Codes for billboards were very straight forward, and anything taken to the BZA on billboards would be turned down so quickly that it wasn't even worth trying to spend the filing fee.

In this case from the time that I first saw this structure I had too immediate questions. First, how did it happen, because it was way too high. It was too close to other structures, and there were too many signs in the mile. Also, didn't somebody come in and do that over a weekend, I went home for the weekend, and drove back to work Monday, and here is a new structure on the Kellogg overpass. The answers to my questions quickly unfolded when I learned that the City's Inspection staff, and the City's Legal staff had given some really bad information out that ran contrary to any previous precedence on billboard signs located on railroad property.

I have spoken with one of the recently retired inspectors and was asking him about it, and he said "Sure I did the inspections and work up on the structures you have on railroad property. They were built pursuant to permits, and we did all the research and everything had to comply with Code."

I look back over the last five years, and I have had advertisers ask, "Can we raise the billboard structure that we have right across the Kellogg overpass." I tell them "No we can't. The Code won't allow it to be any taller than that." Yet this one shows up about 25 feet taller than the existing structures on board. I have also taken calls from people saying they would like to leave space for you in this mile from Kellogg from Broadway to Hydraulic and I tell them no that there are too many signs in that mile, and we can't get a permit to do one, and it is the end of the discussion. Yet one sign appears. As I thought about this, what do you do in response to new illegal billboards coming into town, and I could bring a lawsuit against the City of Wichita for damages to my company, but as I look at the time and money that it would take to do that and how do you put the value on the damage that it has done? I also look at the damage that it has

done to my credibility, if I have told people no you can't do it and now look and see what we have out here.

When I came into the meeting today, I thought there is no way staff can come up with a report saying that this is arises from a condition which is unique to the property in question. The railroad property all over town that has always had to comply with City Code, so the uniqueness I have a hard time understanding. This isn't created by the actions of the property owner. Our Honorable Mayor has referred to me as the complainers in the pages of The Eagle maybe that is appropriate, but I have also worked for about 25 years in this business to develop a good reputation and a good knowledge of the Sign Code. When I tell someone you can't do it, I don't expect to eat those words because the City has changed their mind on which Codes are going to be enforced and which ones aren't. What I can see now the City has set themselves up for some expensive lawsuits if they would force the signs to be removed, and I don't think they want to pony up the money to fix the mistakes that they have made.

If you do decide today that the sign will be able to remain, my one request would be to bring the height down to where it complies with the Code to where it is not the one that sticks up way above all the other signs. So when you come towards downtown from the airport there isn't one sign that jumps up above all the others to compete for your attention.

RUANE We value your perspective. Has your company sought permission to locate a billboard on railroad right-of-way?

LAY I have not. I have two structures that we have acquired from another company about 8 years ago, and those are the ones that I have made reference to.

RUANE Your applications would have been how long ago?

LAY Probably about 10 years ago. Billboard locations on railroad property are not only common in Wichita, they are common across the country.

RUANE How much do you ask that this billboard be lowered?

LAY Bring it in compliance with the Code which your staff report says is 51.4 feet, at least bring the height down. The way our Sign Code is written it allows the most signs in the most intensive zoning. You don't get a lot more intensive than the industrial property under the Kellogg overpass. I have a problem when other people will call, and I have said we don't have anything to talk about.

RUANE Part of your position and request is that this billboard be lowered by 20 feet?

LAY Yes, make it look like the other sign in the area.

PHILLIPS You have mentioned taking action against the City. Now if I am mistaken, and I have seen you make application from time to time, so you still realize that on any of the other boards or properties that you have that is what this Board is convened for is to hear cases. If you would like to make application because this sets a precedence, you are willing to do that?

LAY I wasn't making reference to this Board at the time. The comments that I was making was, my first reaction when I saw the sign?

PHILLIPS You have made use of this Board to achieve the variances that you had.

LAY I hope to continue to.

PHILLIPS I just want to make clear that is one of your options that on each of the properties that you feel are affected by this one, you can come back and reapply.

LAY What I was describing to you was more of a process of how do you vent your frustration. What do I do? Do I want to pursue it or do I want to grit my teeth and complain?

PHILLIPS We do not consider you as a complainer. You are fully aware of the fact that you can use this Board to come back and review all of the ones that you have out there, and you have that opportunity.

LAY The process that I have understood about the BZA is I go to the BZA before I build a sign.

PHILLIPS We are hopeful that if all of the steps fall in line accordingly that is the way that it is done. Sometimes mistakes are made and we are here to correct them.

LAY One of the old jokes in our business is do I ask permission or beg forgiveness?

RON BLUE, CLEAR CHANNEL OUTDOOR, 3405 N. HYDRAULIC, WICHITA KS 67219
We are the largest outdoor company in town. So many questions have been raised here on the panel. Three years ago I received leases on railroad property. I got permits from the County to build two structures out on Zoo Blvd. and 21st Street, and the City of Wichita stepped in at that time and shut me down. I was not able to build them. The poles are still in the ground. Three years after that an out of town company comes in town over a weekend and puts three structures in the air. It gives him an unfair advantage in the market place. He has done something that we were not allowed to do. The Codes and Ordinances are in place, and they were not followed. I have two signs, one within 80 feet of the structure that was built. He has been able to do something that I was told not to do and was not allowed to do. The reason they told me I could not do it was because of zoning.

This issue is still not dead. As we indicated, this is an important decision you are about to make. Over the last year a moratorium has been put on our business to review it. This is the action of people that have come from out of town to put these structures up and have come before this Board to get a variance. I have been in town 6 years, and I have never had to come before this Board because I follow the rules.

RUANE You mentioned two locations that you had purchased on railroad right-of-way out near the Zoo, and it was zoning that prevented you from being allowed signs?

BLUE That was the answer that we got back from the City of Wichita. The permits were issued by the County. That property is in the County. The permits were issued in good faith by the County. The City of Wichita got to the County, and the County rescinded our permits based on

the fact of the Zoning. Railroad property normally takes on the zoning adjacent to it. This was Light Commercial out there. We had the ability to do it, and we got shut down.

SKELTON When you mentioned that they did not follow the rules in this case, can you clarify what your interpretation of this is?

BLUE We have had 15 structures probably built over the last year in this market place, and I believe more than half of them have come before this Board. There have been 2-3 companies come from outside that are requesting variances for whatever reason. The ones in question here today are totally unexplainable. If the City is saying that they based their decision for Mr. Bressler on a decision that they made against us 3 years ago, then I ask you why do I not have my structures in the air.

SKELTON On that point, you did receive this permit first. You began construction and was halted by the City of Wichita, so who paid for that?

BLUE I did.

SKELTON This is a question for staff. Who pays for this when they built all these?

BLUE You want to know how much I invested in those structures was about \$150,000.

RUANE Did the railroad own or lease that right-way?

BLUE I cannot answer that.

FOSTER Is your main concern on this particular sign the height of it? Or the fact that it is there?

BLUE The fact that it is there. It should be taken down. It violates all Codes. If there was room in that mile to build a sign, John Lay and I would have looked at it long ago. We have had hundreds of opportunities to possibly build in there. It is the highest demanded area in the City of Wichita. You have a sign that is 20 feet higher than all of ours. You have a setback that was not adhered to. You have spacing, everything. The sign is wrong.

PHILLIPS You mentioned that you had the two projects, and you received approval from the County, and you preceded, and you were stopped by the City. Had you not received any stoppage from the City, you would have continued to complete the projects, correct?

BLUE Correct.

PHILLIPS But you received the notice and you stopped?

BLUE We had a cease order and stopped. We applied for our permits, received permits, had leases in hand, ordered structures, ordered materials, began the construction, we got our poles in the ground, and then we received the cease order.

PHILLIPS It is unfortunate that you couldn't recoup that cost. You have to realize that this Board can't rule on the other two, and we have to look at the case that is presented today.

BLUE I understand, and I think this sign should be taken down.

CATHY O'HARA, KDOT OUTDOOR ADVERTISING MANAGER It is my responsibility to enforce the Kansas Highway Advertising Control Act. In this Act it requires that any off-site sign is restricted with regard to zoning, spacing, and size. The Zoning I understand is industrial so that wasn't an issue, but the spacing is a concern because the State spacing is 500 feet. Now, the City of Wichita has a less restrictive spacing, but the Law also says that local jurisdiction can be more or less restrictive with spacing and with size, but they are not allowed to overrule us on zoning.

I am going back to the history of all three because I have been before the DAB, MAPC, for the zoning change on Zoo Blvd. That zoning was changed from no zoning to commercial zoning. This company asked for a permit on that property on Zoo Blvd., and we indicated that it was not zoned commercial or industrial, and they were contending that it was un-zoned, and we said that it was not zoned commercial or industrial. Basically we took the position at the State that the whole City of Wichita is comprehensively zoned. You don't have spots out there that aren't zoned. This one happens to be at Zoo Blvd. and I-235. There is not a backside on that sign. Basically, the State is saying that you can't have an off-site advertising sign on our control areas. Zoo Blvd. is not in our control area, so we have basically inventoried it, but it really is not in our control area, but we will control it to make sure that there is not advertising on I-235. When I went to the DAB and MAPC for the zoning change it was said several times, I don't have a luxury at that State level for a variance. You can't hide a billboard.

FOSTER Were they suppose to get a permit from the State on this?

O'HARA The only time you are required to get a sign permit from the State is in a un-zoned area.

FOSTER The whole City is zoned including the railroad. When they were told this was an un-zoned area should they have gotten a permit from your office?

O'HARA No.

PHILLIPS I am confused about what your point is in regards to this case today.

O'HARA My point is mostly spacing, that it does not meet the spacing requirements.

PHILLIPS Are you trying to add something beyond what has already been stated, here the fact that we have here in Wichita a 330 foot requirement and they are asking for a variance for 80 feet?

O'HARA My position is that the 330 feet spacing, I have a concern about you granting a variance on this.

PHILLIPS Do you know why this Board exist?

O'HARA To grant variances.

PHILLIPS To grant variances or deny them, but to hear them. This Board has been here a long time. We have the right to hear and to rule on this case.

O'HARA I understand that.

PHILLIPS You have jurisdiction on this case or not?

O'HARA I believe the State does, because the law says that we need to certify local jurisdiction, and when we certify them, we are certifying that if they are less restrictive or more restrictive than us they should be certified.

PHILLIPS Have you presented your view to our legal staff prior to the hearing?

O'HARA No.

PHILLIPS Don't you think that would be more proper at this point? Or are you trying to say that we have another issue here to consider here beyond what we have in this case.

O'HARA I am just stating the position that I feel that the State takes on working with local jurisdictions.

PHILLIPS I think that might be another matter for Legal staff. Is that something the Board can even hear?

RUANE If your objection to the City's spacing standard of 330 feet, then I think that is something the State and the City need to work out. If your objection is to this Board's jurisdiction and ability to make a variance from the City standard of 330 feet tell me now.

O'HARA I would have to contact Legal on that. I am not in a position to say what the Federal highway legislation says.

PHILLIPS You have taken time to come down here. Do you have something specific to this case that is germane to this case? I am trying to understand your point as it applies to this case.

O'HARA I am concerned with the variances on the highway signs and the certification because we are expecting the 330 feet or whatever your Codes are. I would at least request that we get notification when there are variances on these.

PHILLIPS This Board can't do that. You have to go through staff and through the City departments.

O'HARA How do you get information on that?

PHILLIPS Talk to Dale Miller there on your right.

SKELTON My comment would be that it compounds the difficulty of this case when our City government makes a mistake which is unavoidable, from time to time, and it costs the private sector money.

MILLER I would advise you that this case has nothing to do with the MAPC case, and has nothing to do with the case and applications that Mr. Blue was talking about on Zoo Blvd. That property at the time those requests were made, that Mr. Blue was referring to, that property was in the County and at the time it was under County jurisdiction. The City has no authority in the County to issue permits, or stop work orders, or anything else. So for someone to suggest that the City of Wichita took action to stop that project, we have no jurisdiction. Now what did happen was that the County erroneously issued permits, and this is my understanding, to let him start work, they started work, someone noticed it was going up and asked the county permit writers what the deal was, and they rechecked the stuff and found out that the County had made an error issuing the permits. There are only two zoning districts in the County that allow signs, and this has nothing to do with this application. But in the "LC" district you can have signage, but it is restricted to advertising on-site uses only.

SKELTON Does the realization that you made a mistake does that play into staff recommendation?

MILLER The permits are issued by OCI. The Planning Department does not issue the permits.

SKELTON Now that the billboards are constructed and staff has realized that they made a mistake, who pays for the mistake?

MILLER That is not your concern. Your concern is to look at the five criteria, and if they meet it they do, and if they don't they don't.

MARKHAM I know that you have said the case on Zoo Blvd., doesn't have anything to do with the one that we are looking at here, but I want to ask a general question since we have the State person here. Is there something in the rules and regulations that supercedes what the City permits?

MILLER I can't really answer the question. She said at one point during her presentation that the State laws and rules only apply to those situations that they did not have zoning. The City of Wichita has zoning, so I don't know if their rules apply in addition to that or not.

LAY I have worked with Mrs. O'hara for a number of years, and there are a few things that I think she probably struggles with. Talking to much sign talk and probably not in the language that everyday people going down the street understand. Jurisdiction, they are charged and she talked about the Kansas Highway Control Act. This is the Ladybird stuff that was passed in 1972 by the State in response to the Ladybird Johnson stuff that was done in 1965. It says that anything that is visible from the main traveled way of interstates and primaries, I-35, I-235, 54, that is their jurisdiction. What is there ultimate hammer is that if they don't maintain effective control, highway funds are cut off. I don't know if there is any chance that this case will ever filter back to the Federal Highway Administration.

The issue, although they are not writing permits, if I want to put up a sign in an area that has industrial zoning, although they don't issue me a permit they are charged with regulating it and making sure that it complies and if it doesn't comply she sends a letter. On spacing, the City of Wichita talks about spacing as you go down the road. The 80 feet spacing in this case I believe is making reference to a sign that is on the opposite side of the highway. The State is going to treat each side as a separate issue.

PHILLIPS So you are saying that there is something unique between the way the City enforces their requirements and the way the State enforces theirs?

LAY Yes.

FERRIS The speakers have done a nice job about talking about everything but this case. This case in front of you I believe you have the information provided by staff and also in my documents that show that we have clearly met the five criteria. That is the only grounds that you have to worry about today, whether we comply with State issues is very irrelevant to your discussion. It is nice of her to come down and confuse you. She did it at the DAB and MAPC, and it is confusing, but it is not germane to what the issues are before you. Whether or not Mr. Blue has an issue in the County, he can go to the County BZA if he feels like he has been wronged. The fact is that the City told us, we came and asked and they told us, we came back and asked and they told us again, and we relied on that information. We relied on the information in a way that I thought and any reasonable person would think that we did everything that we should have done. Now after the fact that the City determined that they had made a mistake that clearly is unique. The City makes very few mistakes. I think if you will look at the Planning Department's staff findings, it cannot be more clear that we have met the five criteria that you are to be discussing.

SKELTON When I was asking a question about how much influence the mistake would make into passing or not passing the variance, you look at uniqueness. It says the applicant was informed twice that the permit was not required. Otherwise the non-conformities could have been identified prior to construction and addressed at that time. Also hardship, removing the billboard would entail significant expense and lost revenue to applicant in order to remedy an error by the Office of Central Inspection. I agree with the five criteria.

FOSTER I asked Dale before about the similarity of the previous case and this case, and I don't doubt that he interpreted my question correctly. I was thinking about the circumstances as it came about were the same. If you recall I made the statement and may have made the motion on that one because anytime these things occur I look at these as if they don't exist. I look at these as if they would deserve a variance in the first place.

This one is different. This is in an area that is very active, and if you look at the criteria, I believe that it is unique to the extent that they were told twice that they could do it. I think it is a hardship, although I heard the figure of \$100,000, I wonder if it could be lowered. If you look at the question of adjacent property, it certainly has been brought out the effect upon other signs in the area. Does it meet the criteria of public interest? It is an eyesore. This is very distracting where it is located. I don't think it meets the spirit and intent of the regulations.

SKELTON What did you say is null and void?

FOSTER He has indicated that a sign on the railroad property would be null and void. Randy Sparkman indicates that in his letter.

MARKHAM That was the September 5th.

FOSTER The letter from Randy Sparkman says please consider this formal notification that any previous notification that the City of Wichita Sign Code would not regulate on railroad property within the city limits of the City of Wichita should be considered null and void as of this date.

RUANE What was the date of the erection of this sign?

FERRIS In mid-August 2003, they were erected before that letter was sent out.

GREENLEE The sign was up and in place prior the letter?

RUANE That is correct.

PHILLIPS Isn't he stating though that just a notification of the permit is null and void, not that they can't have a sign there. I am reading this is that the notification that there wasn't a permit required is null and void, and that they should apply for a permit and comply with the regulations. But I don't think they are saying you cannot have a sign there. Dale, is a sign permitted there under the codes?

FOSTER You are saying that they needed to come in for a permit?

PHILLIPS That is my understanding of it.

RUANE The sign was up, and the notification is that whatever previous notices that your received saying that you would never need to apply are null and void as a mistake. If you have any future plans pending to install billboards on railroad properties, permit application and approval will be necessary. I think the letter excludes that which has already taken place by September 5, 2003.

FOSTER The first sentence says, "It has recently been brought to my attention that an off-site billboard sign has been installed in the City of Wichita contrary to Sign Code Regulation."

PHILLIPS Which means that it doesn't comply. It doesn't mean that it is not allowed.

GREENLEE Which is what I picked up is that it is already there.

PHILLIPS Had they followed Code would a sign be allowed at that location?

MILLER No, that is why they are here, not without the variances.

PHILLIPS Let's say that they complied with all the height, setbacks, everything.

MILLER It is the spacing that would have caught them, the 330 feet.

FOSTER MOVED THAT THE BOARD SET FORTH THAT THREE OF THE FIVE CONDITIONS IN THE SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE FOUND NOT TO EXIST AND THAT THE VARIANCE BE DENIED.

MOTION DIES for lack of second.

PHILLIPS MOVED GREENLEE SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT THE SECRETARY'S REPORT.

RUANE I cannot imagine a more unique situation, however wrong the City was. They consistently informed the applicant that no sign permit was necessary at all. I believe that the applicant asked for and got reconfirmation that there was no permit necessary, and I don't think you can punish the applicant for relying on the advice and information that they were provided directly by the Office of Central Inspection.

PHILLIPS Regardless, whether this is in State or out of State, that anybody in this situation, I would encourage them to come before this Board, whether it be Mr. Blue or John Lay. I agree with their statements about when you follow, as they have done, the proper protocol, and then in some period of time afterwards, I don't think you should be punished for that.

MARKHAM The time here the first communication that was sent out was in March and the null and void statement did not come out until September. So there is a great time if you are a business. You get yes. You are on the move.

FOSTER I am not sure we are here to correct such mistakes by variances.

ROGERS I agree with all the comments of my fellow Board members. I have one problem on this case, and there is one that I just can't get past and that is the statement under public interest. Is that the billboard is not significantly out of scale? From the other billboard cases that we have heard over the years it seems like those applicants had to erected those signs based on certain height restrictions and things like that. It seems like this sign was erected without those same guidelines.

**MOTION carries 5-2. (ROGERS, and FOSTER opposed)
The Board adopts the following resolution:**

BZA RESOLUTION NO. 2004-00033

WHEREAS, Kansas and Oklahoma Railroad c/o Brad Snow (Owner); Bressler/Kelso Joint Venture c/o Pat Kelso (Applicant); Ferris Consulting, c/o Greg Ferris; Mike Case (Attorney); pursuant to Section 2.12.590.B, Code of the City of Wichita, requests variances for a billboard to increase the permitted height from 51.4 feet to 69.8 feet, to reduce the front setback from 20 feet to 15 feet, to increase the number of billboards permitted within the mile from five to six, and to

reduce the spacing required between billboards from 330 feet to 80 feet on property zoned "LI" Limited Industrial legally described as follows:

A 50 foot wide strip of land with 25 feet on each side of the following described centerline: Commencing at the Southwest corner of Lot 108, on Mead Avenue, Hodson and Stancer's Addition, Sedgwick County, Kansas; thence West along the North right-of-way line of Gilbert Street for a distance of 235.00 feet to a point of beginning; thence north 1596.00 feet to a point that is 1596.00 feet north and 286.00 feet west of the Southwest corner of said Lot 108, west line extended north; thence West at right angles to previously described line for a distance of 50 feet to a point of termination. Generally located south of Kellogg and east of St. Francis.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of June 22, 2004, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the applicant was informed twice by the Office of Central Inspection that a permit for the billboard was not required. Had a permit been required, the non-conformities could have been identified prior to construction and addressed at that time.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as adjacent properties are used primarily for industrial purposes and are located along a state highway where billboards are common. The variances requested for the billboard do not significantly increase the impacts of the billboard on adjacent properties.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as the applicant relied upon an Office of Central Inspection interpretation that a permit was not required and constructed the billboard in good faith based on this written interpretation. Removing the billboard would entail significant expense and lost revenue to applicant in order to remedy an error by the Office of Central Inspection.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as the billboard is not significantly out of scale and the variances requested do

not detrimentally impact uses or projects of public interest.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as the billboard reasonably balances the need for the sign with the preservation of the visual qualities of the community.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that variances be granted for a billboard to increase the permitted height from 51.4 feet to 69.8 feet, to reduce the front setback from 20 feet to 15 feet, to increase the number of billboards permitted within the mile from five to six, and to reduce the spacing required between billboards from 330 feet to 80 feet subject to the billboard complying with all other regulations of the Sign Code on property zoned “LI” Limited Industrial legally described as follows:

A 50 foot wide strip of land with 25 feet on each side of the following described centerline: Commencing at the Southwest corner of Lot 108, on Mead Avenue, Hodson and Stancer's Addition, Sedgwick County, Kansas; thence West along the North right-of-way line of Gilbert Street for a distance of 235.00 feet to a point of beginning; thence north 1596.00 feet to a point that is 1596.00 feet north and 286.00 feet west of the Southwest corner of said Lot 108, west line extended north; thence West at right angles to previously described line for a distance of 50 feet to a point of termination. Generally located south of Kellogg and east of St. Francis.

ADOPTED AT WICHITA, KANSAS, this 22nd DAY of JUNE, 2004.

RUANE Item 3, Case No, BZA2004-41, Variance to permit a sign to face other than the direction of travel along the street on property zoned “LI” Limited Industrial. Applicant City of Wichita, %Allen Bell, Agent Graphic Systems Inc., %Diana Williamson, generally located approximately 500 feet south of 29th Street North on the east side of Ridge Road.

SECRETARY’S REPORT

CASE NUMBER:	BZA2004-00041
OWNER/APPLICANT:	City of Wichita c/o Allen Bell (Owner); Ritchie Companies (Applicant)
AGENT:	Graphics Systems, Inc. c/o Diana Williamson
REQUEST:	Variance to allow a sign to face other than the direction of travel along the street
CURRENT ZONING:	“LI” Limited Industrial
SITE SIZE:	4.83 Acres
LOCATION:	Approximately 500 feet south of 29 th Street North on the east side of Ridge Road (2872 N. Ridge Rd.)

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: Ritchie Companies has an office building on 4.83 platted acres that is zoned “LI” Limited Industrial and is located approximately 500 feet south of 29th Street North on the east side of Ridge Road (2872 N. Ridge Rd.). The City of Wichita is the land owner due to industrial revenue bonds issued by the City to fund construction of the building; therefore, the applicant is technically the City of Wichita. The beneficiary of the application, however, is Ritchie Companies.

Ritchie Companies had Graphic Systems, Inc. install lettering with their business name on a three-foot high by 58-foot long concrete wall that is located in front of the office building and parallel to the Ridge Road (see attached photographs). No permit was acquired for the installation of the lettering, and the sign inspector subsequently determined that the lettering would not have been eligible for the issuance of a permit because it does not face the direction of travel along Ridge Road.

Section 24.04.221.1. of the Sign Code requires that a ground sign face the direction of travel along the street. Section 24.04.220(r) states that a sign faces the direction of travel along the street if the sign face is angled no more than 30 degrees from a line that is perpendicular to the street. Since the sign on the subject property is parallel to the street, a variance to Section 24.04.221.1. of the Sign Code is required to permit a sign that does not face the direction of travel along the street. The applicant submitted the attached written statement that addresses how the request meets the criteria for granting the variance requested.

ADJACENT ZONING AND LAND USE:

NORTH	“LI”	Single family
SOUTH	“LI”	Vacant
EAST	“LI”	Concrete plant
WEST	“SF-5”	Single family

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the property is developed with a high-end office building containing low and minimal signage, which is not customarily found within the “LI” Limited Industrial zoning district.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the sign has a significant setback from the road, has a low height, and is architecturally incorporated into the landscaping around the office building.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as the applicant would be required to remove the sign and replace it with a sign that is less compatible with the architecture of the property, which would entail significant expense for a less desirable result than the current sign.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the signage is tasteful in design, is of an appropriate scale, and has minimal lighting.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as the slight curvature of the wall and the significant setback from the street make the sign visible from travelers along the street.

RECOMMENDATION: Should the Board determine that the conditions necessary for the granting of the variance exist, then it is the recommendation of the Secretary that a variance to allow the existing ground sign to face other than the direction of travel along the street be GRANTED subject to the sign complying with all other regulations of the Sign Code, including receiving a sign permit.

MILLER Basically this is a situation, as you can see, it is a large office building on the east side of Ridge Road, and the sign at issue are the letters here that spell out Ritchie Companies. If this curved wall had been built perpendicular to the street, and they had put the word Ritchie Companies on each side of the concrete wall perpendicular to Ridge Road we wouldn't be here. But the way the Code reads the signs are suppose to be perpendicular to the road rather than facing the road. So this variance is to allow the sign to face the road as opposed to the direction of travel.

RUANE Even configured as it is, if those characters were not letters of the alphabet but rather star, stripes would we be here today?

MILLER As long as they weren't anything trademark, or color related to the company that is correct, they could put designs or whatever.

GREENLEE You are trying to protect the people across the street having to look at the street all the time, is that why it was written the way it was written?

MILLER I can't defend the way the Sign Code is written. From a traffic safety standpoint the idea is that if the sign is facing the driver he is always looking forward as oppose to being distracted and reading the sign from the side.

DIANA WILLIAMSON, GRAPHICS SYSTEMS This occurred before my time, we are in agreement with staff recommendation. This is more of a decoratively addition to the property. It is not meant to be the site identification sign. There is an additional site identification sign that is adequately permitted with the City of Wichita.

GREENLEE MOVED ROGERS SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT THE SECRETARY'S REPORT.

MOTION carries 7-0. The Board adopts the following resolution:
BZA RESOLUTION NO. 2004-00041

WHEREAS, City of Wichita c/o Allen Bell (Owner); Ritchie Companies (Applicant); Graphics Systems, Inc., c/o Diana Williamson; pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to allow a sign to face other than the direction of travel along the street on property zoned “LI” Limited Industrial legally described as follows:

Lot 1, Block 1, Lakeside Park Addition. Generally located approximately 500 feet south of 29th Street North on the east side of Ridge Road (2872 N Ridge Rd.)

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of June 22, 2004, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the property is developed with a high-end office building containing low and minimal signage, which is not customarily found within the “LI” Limited Industrial zoning district.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the sign has a significant setback from the road, has a low height, and is architecturally incorporated into the landscaping around the office building.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as the applicant would be required to remove the sign and replace it with a sign that is less compatible with the architecture of the property, which would entail significant expense for a less desirable result than the current sign.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as the signage is tasteful in design, is of an appropriate scale, and has minimal lighting.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of

the Board that that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as the slight curvature of the wall and the significant setback from the street make the sign visible from travelers along the street.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance be granted to allow a sign to face other than the direction of travel along the street subject to complying with all other regulations of the Sign Code including receiving a sign permit on property zoned “LI” Limited Industrial described as follows:

Lot 1, Block 1, Lakeside Park Addition. Generally located approximately 500 feet south of 29th Street North on the east side of Ridge Road (2872 N Ridge Rd.)

ADOPTED AT WICHITA, KANSAS, this 22nd DAY of JUNE, 2004.

HERB SHANER, OCI, BZA2004-22 Variance to increase the permitted size of a building sign for Genesis Health Club from 68 square feet to 264 square feet, located north of Central and east of Socora. The sign was put up without a permit pulled? The permit was pulled. They were doubled fee, and it has been paid.

RUANE Item 5, Discussion of BZA Rules of Procedures requested by Bickley Foster, table for another meeting because Sharon Dickgrafe, and Doug Moshier, and Scott Knebel are not here today.

Meeting adjourned 4:00 p.m.